to enable me to come to a finding that the order of the Court Martial dated April 20, 1984, be removed into this Court for it to be quashed. This application is therefore dismissed with costs.

Application dismissed.

Solicitors: *Bala Mahesan & Co.*

RE YII HENG KIEW & ANOR. *EX PARTE* SIONG LING (PTE) LTD.

[O.C.J. (Chong Siew Fai J.) January 7, 1986]

[Sibu – In Bankruptcy No. 7 of 1978]

Bankruptcy – Sale of land by bankrupt – Adequacy of consideration – Payment by purchaser to chargee – Declaration sought by Official Assignee.

The case concerns the valuation as at November 16, 1978, of a piece of land conveyed by a bankrupt to the respondent for the consideration of $2,000. The respondent had paid $8,274 to a bank for the discharge of the subject land. The applicant contended that the sale consideration was below the market value. The court accepted the value of the land at $21,000.

Held: (1) there should be a declaration that the consideration for the conveyance by the bankrupt Yii Hieng Kiew to the respondent Yii Hieng Lai of the subject land *vide* Memorandum of Transfer dated October 4, 1978 and registered at the Land Office, Sibu on November 16, 1978 as Sibu Instrument No. L.4863/1978 was lower than the fair market value of the subject land at the time of the said conveyance;

(2) judgment for the applicant against the respondent in the sum of $10,726 being the difference between the value of the consideration paid by the respondent and the fair market value of the subject land at the time of the conveyance of the subject land;

(3) costs of and incidental to this motion be paid by the respondent to the applicant. In the absence of an agreement, such costs to be taxed.

BANKRUPTCY.

Latip bin Mohammad for the Official Assignee.
Stephen Chung for the respondent.
Charles Ling for the petitioning creditor.

Cur. Adv. Vult.

Chong Siew Fai J.: Having heard submissions on behalf of both parties and having considered the evidence adduced, I prefer the evidence of R.W.1 Wong Ing Siong to that of A.W.1 Ling Swee Tai on the valuation of the land in question at the material date of November 16, 1978. The comparable sales that Ling relied on were those in 1979 and 1980 *i.e.* after November 11, 1978. The sales relied on by Wong took place before, in and after November 1978. I consider, of particular significance, item (a) in paragraph 6 of Wong's affidavit made on October 30, 1985, relating to sale of Lot 404 Block 11 Seduan Land District containing 2.82 acres in November 1978 for $24,500/– which worked out to be at $21,468.67 per hectare. Wong's opinion of the subject land, being at $21,000/– on November 16, 1978, is not far from the assessment by the Sibu Land Office (to which Ling was attached) in the transfer, Instrument L. 4863/1978 (LM4) where the subject land was valued at $22,000/– on November 16, 1978. Though there is evidence of general trend of increase in landed property in the vicinity of the subject land between 1977 and 1980, no specific evidence of the rate of increase was given between the date of "LM3" (September 3, 1977) and November 1978. And it would not be right for the court to speculate.

I accept Mr. Wong as a qualified valuer. He visited the locality. He took into consideration factors that are material for purpose of valuation. On the evidence as adduced, I accept his testimony of valuation of the subject land *i.e.* $21,000/– as at November 16, 1978.

The transfer of the subject land registered on November 16, 1978, was subject to charge L.388/78. (See "LM4"). There is some evidence of subsequent payment of $8,274/– by the respondent to the chargee-bank for the discharge of the said charge. I would take this amount into consideration in favour of the respondent. This, added to the consideration of $2,000/– in L.4863/1978, comes to $10,274/–. After deducting this from the accepted valuation of $21,000/–, the difference is $10,726/–.

In the result, there shall be:

(1) A declaration that the consideration for the conveyance by the bankrupt Yii Hieng Kiew to the respondent Yii Hieng Lai of the subject land *vide* Memorandum of Transfer dated October 4, 1978 and registered at the Land Office, Sibu on November 16, 1978 as Sibu Instrument No. L.4863/1978 was lower than the fair market value of the subject land at the time of the said conveyance.

(2) Judgment for the applicant against the respondent in the sum of $10,726/– being the difference between the value of the consideration paid by the respondent and the fair market value of the subject land at the time of the conveyance of the subject land.

(3) Costs of and incidental to this motion be paid by the respondent to the applicant. In the absence of an agreement, such costs to be taxed.

Order accordingly.

Solicitors: *Charles Ling.*

TAN CHENG HOCK v. CHAN THEAN SOO & ANOR.

[O.C.J. (Edgar Joseph Jr. J.) July 29, 1985 & February 13, 1986]

[Penang – Civil Suit No. 248 of 1967]

Land Law – Disputed property paid for with plaintiff's cheque but registered in defendants' name – Claim by plaintiff – Refusal to transfer by defendants – Defendants claim cash in exchange for plaintiff's cheque – Credibility of witnesses – Demeanour not to be relied on solely – Balance against rest of the evidence and probabilities of case – Whether declarations for plaintiff should be granted.

Evidence – Credibility of witnesses – Demeanour not to be relied on solely – Balance against rest of evidence and probabilities of case.

The plaintiff was a recently retired businessman aged 76. The first defendant, aged 62, was a security officer at Bayan Lepas but at all material times to this suit he was a clerk attached to the Vehicle Department of Penang Municipality and in receipt of a salary of $193 per month. He claimed to have retired from the Municipality but later admitted he was dismissed for misappropriation of funds. He was convicted and sentenced to imprisonment for one week. The second defendant is a housewife and the wife of the first defendant. The parties were on very close terms until the dispute concerning the ownership of a dwelling house ("the disputed property") in Penang erupted into a legal battle. The first defendant applied to and was allocated the disputed property by the Municipality. In his application, he proposed to pay for the disputed property by instalments but in fact he paid for it by a single lump sum of $9,900 by a cheque drawn out by the plaintiff in favour of the defendants, who registered the disputed property in their names in 1956, but its title deed was handed to the plaintiff several months after purchase and remained with him until production in court. The plaintiff received no rent from the defendants, who paid the rates and outgoing.

When the defendants flatly refused to transfer the disputed property to the plaintiff, he commenced these proceedings seeking declarations and consequential orders in his favour. Each side had accused the other of lying and deceit. The decision depended on the credibility of the parties and their witnesses. The crucial question was: Why did the plaintiff issue the cheque for $9,900 in favour of the defendants. The plaintiff contended that the defendants had no money to pay for the disputed property and suggested he buy it and he agreed. The defendants' case was that they exchanged cash for the plaintiff's cheque.

Held: (1) in arriving at his finding as to credibility, the learned trial judge did not rely solely on demeanour for that had to be balanced against the rest of the evidence and the probabilities of the case;

(2) the plaintiff was entitled to the declarations prayed for in the statement of claim with usual consequential orders and costs;

(3) the counterclaim was in consequence dismissed.

Cases referred to:

(1) *Powell & Wife* v. *Streatham Manor Nursing Home* [1935] A.C. 243, 267.

(2) *Wiedemann* v. *Walpole* [1891] 2 Q.B. 534, 537.

CIVIL SUIT.

Darshan Singh for the plaintiff.

Ranjit Singh for the defendants.

Cur. Adv. Vult.

Edgar Joseph Jr. J.: This case is about three relatives who, although at one time, on very close terms, have fallen out, so much so, that their quarrel has erupted into a long drawn out and bitter legal battle about the ownership of a dwelling house ("the disputed property"). Each side has accused the other of lying. Allegations of deception and deceit have been freely made. As a trier of fact, it will be my task to determine where the truth lies.

A review of the circumstances of this case, which I shall presently undertake, will make it clear beyond argument, that my decision must depend upon the credibility of the parties and that my assessment of their credibility will be the decisive consideration. In arriving at my finding as to credibility, I did not rely solely on demeanour for that has to be balanced against the rest of the evidence and the probabilities of the case.

It may be well to also remember what was said by Lord Wright and often quoted from his judgment in *Powell & Wife* v. *Streatham Manor Nursing Home,*[1] of the possibility of judges being deceived by adroit or plausible knaves or by apparent innocence. Much to the same effect,